



ARKANSAS JUDICIARY

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Rule 17. Parties Plaintiff And Defendant.

(a) Real Party in Interest. Every action shall be prosecuted in the name of the real party in interest. An executor, administrator, guardian (conservator), bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or the State or any officer thereof or any person authorized by statute to do so may sue in his own name without joining with him the party for whose benefit the action is being brought. No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

(b) Infants or Incompetent Persons. Whenever an infant or incompetent person has a guardian, the guardian must sue or defend on behalf of the infant or incompetent person. If an infant or incompetent person does not have a duly appointed guardian, he may sue by his next friend or by a guardian ad litem. The court shall appoint a guardian ad litem for an infant or incompetent person not otherwise represented in an action or shall make such other order as it deems proper for the protection of the infant or incompetent. No judgment shall be rendered against an infant or incompetent until after a defense by a guardian or guardian ad litem, who shall be appointed by the court upon application of any interested party and who shall promptly respond to the claim against the infant or incompetent as provided by these Rules.

Reporter's Notes to Rule 17: - 1. Rule 17 is a slightly modified version of FRCP 17. Basically this rule deletes various provisions of Sections (a) and (b) of FRCP 17 which have reference to actions brought by the United States or under a federal statute and to diversity of citizenship actions.

2. Section (a) is essentially the same as superseded Ark. Stat. Ann. 27-801 and 27-804 (Repl. 1962). It has generally been held that the real party in interest is the person who can discharge the claim upon which the action is brought and not necessarily the person who is ultimately entitled to the benefit of recovery. *House v. Long*, 244 Ark. 718, 426 S.W.2d 814 (1968). The federal courts have generally held that the effect of such rule is to require the action to be brought by the person who is entitled to enforce the right or claim. *Wright & Miller*, *Federal Practice And Procedure*, Sec. 1543. The list of persons in 17(a) is not meant to be conclusive and exhaustive and any person possessing the right to enforce a particular claim is deemed the real party in interest even though he is not specifically identified in the rule. Section (a) of this rule does not appreciably alter Arkansas law on real parties in interest.

3. While the Federal Rule is not clear on whether objection to a party as not being the real party in interest must be made by Rule 12(b) motion or by answer, *Ohmer Corp. v. Duncan*

Meter Corp., 8 F.R.D. 582 (D.C. Ill., 1948) and Clark v. Chase National Bank, 45 F. Supp. 820 (D.C. NY, 1942), Rule 12(b) does permit such objection without any question, although the objection can be raised under Rule 8(c).

4. Section (b) of the Federal Rule is omitted in its entirety from Rule 17 as it is not applicable to actions in state court.

5. Section (b) of this rule is basically the same as FRCP 17(c). Omitted from the Federal Rule are all those persons designated as representatives of an infant or incompetent except a guardian. The parenthetical reference to a conservator is made necessary by Ark. Stat. Ann., Title 57, Ch. 7 (Supp. 1977). Rule 17 makes it mandatory that a guardian sue or defend as opposed to the permissive feature of FRCP 17.

6. Section (c) is not found in the Federal Rule. It is thought to be worthwhile as giving a measure of protection to prisoners who might not otherwise be protected. This section tracks superseded Ark. Stat. Ann. 27-833 (Repl. 1962). See also Rule 7.

Addition to Reporter's Notes, 2004 Amendment: - Subdivision (c), which has no counterpart in Fed. R. Civ. P. 17, has been deleted. Borrowed from a superseded statute that was part of the Civil Code of 1868, the subdivision stated that "[n]o judgment shall be rendered against a prisoner in the penitentiary until after a defense made for him by his attorney, or, if there is none, by a person appointed by the court to defend for him." Because of the elimination of subdivision (c), prisoners no longer receive special treatment with respect to default judgments. See Zardin v. Terry, 275 Ark. 452, 631 S.W.2d 285 (1982). However, the safeguards in Rule 4(d)(4) and Rule 12(a)(1) afford incarcerated persons notice, the opportunity to be heard, and the opportunity to obtain counsel. Rule 12(a)(1), as amended in 2004, provides that incarcerated persons have 60 days after service of process in which to file an answer, compared to the 20-day period for residents of the state. This differential reflects the role of prison employees in delivering the summons and complaint, as well as the likelihood that an incarcerated person will need more time than other defendants to arrange for legal representation.

History Text:

History. Amended January 22, 2004

Associated Court Rules:

Rules of Civil Procedure

Group Title:

IV. Parties

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